



**MINUTES OF MEETING OF THE CITY COUNCIL
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 16, 2003, 8:00 p.m.**

MEETING

The Meeting of the City Council was called to order by Mayor/Chair Cooper at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member Rodriquez.

ROLL CALL

Present: COUNCIL MEMBERS Jimenez, Hilson,
Rodriquez, Ward, Dowling, Henson
MAYOR Cooper
Absent: None

PRESENTATION: Business Award

The City of Hayward presented the Business Recognition Award of September 2003 to Florence and New Italian Art Company, manufacturers of quality garden statuary. Florence and New Italian Art Company began in 1916 and is now under the third generation ownership of the Fontana family, consisting of Monique and Mariano and their sons, Gerard and Marc. In 1987, the Florence and New Italian Art Company moved to their Hayward facility and have since expanded their operation four times. They now occupy 5 acres. During this time, their staff has grown from 12 to 80 employees, many of who are Hayward residents. This family-owned and operated business has become one of the West Coast's premier manufacturers of quality hand cast garden statuary and is currently in the process of establishing a national presence. The City of Hayward is proud to recognize Florence and New Italian Art Company with the City's Business Recognition Award for their contributions to the City of Hayward by expanding their facilities in Hayward, being an industry leader, and attracting positive attention to Hayward. Mr. Mariano Fontana and his son, Mark, accepted the award and commented that they were honored with the award, commenting that moving to Hayward was one of the best business decisions they have made.

Mayor Cooper then presented an American flag, which had been flown over the American Embassy in the United Arab Emirates on behalf of the Hayward Police Department, June 15, 2003, to the City Manager. She asked that the flag be flown on Veteran's Day in November.

Council Member Ward also read a note sent to Council from Hayward Police Sgt. Joe Martin, serving in Iraq. Mr. Martin thanked the members for their support of employees who have been activated from the reserves and described some of his duties.

City Manager Armas introduced Pat Dwyer, the interim Police Chief. Chief Dwyer noted that the officer returned to work this day. He also expressed his appreciation with his interim appointment and said he was honored to serve during the search for a new chief.

DRAFT

PUBLIC COMMENTS

Jason Moreno commented in remembrance of September 11, 2001. He described the holocaust of that day.

Matt Maloon, business representative for the electrical unions in the County of Alameda, spoke on behalf of prevailing wages and asked the Council to reaffirm its commitment to these goals. He distributed a statement and the text of the legislation.

Kenneth Bradley discussed the possibility of the City of Hayward doing a traffic survey on Seventh Street between “D” and “B” Streets and the possibility of installing speed bumps on 7th Street.

The Mayor asked that Public Works staff investigate this.

Peter Raab said he had previously spoken about a ‘crater’ that is about ten feet deep in his neighbor’s property which is right next to his property on Chronicle. It still remains and he considers it a dangerous situation.

Milan Sramek, who resides with Mr. Raab, agreed that this is a dangerous situation since it is right up against the property line. He suggested that the City inspect the property.

Mayor Cooper requested the City Manager look into the situation.

Oprey Van Buren urged the Council to place the recent legislation regarding prevailing wages in charter cities on a future agenda. He asked for a Council resolution to affirm its support to support working people.

Council Members Dowling and Henson both asked that this item be agendaized at an upcoming meeting. City Manager Armas explained that staff needed time to understand implications and present information to Council for consideration.

Barbara Swarr reported that the California Conference on Redevelopment Abuse will be held in Oakland on October 4. She commented on the agenda for that conference.

James Jardine commented that Sorbus Street is a private street with a separate grant deed. He would speak further when Item 5 is discussed.



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CONSENT

1. Approval of Minutes of the City Council Meeting of July 22, 2003

It was moved by Council Member Hilson, seconded by Council Member Rodriquez, and unanimously carried to approve the minutes of the City Council Meeting of July 22, 2003.

2. Authorization for the City Manager to Execute a Lease with the Federal Aviation Administration for Control Tower Space at the Hayward Executive Airport

Staff report submitted by Airport Manager Shiner, dated September 16, 2003, was filed.

It was moved by Council Member Hilson, seconded by Council Member Rodriquez, and unanimously carried to adopt the following:

Resolution 03-124, "Resolution Authorizing the City Manager to Execute a Lease Agreement Between the City of Hayward and the Federal Aviation Administration for Control Tower Space at the Hayward Executive Airport"

3. Authorization for City Manager to Execute a Professional Services Agreement with The Culver Group for a Boundary Survey of the Hayward Executive Airport

Staff report submitted by Airport Manager Shiner, dated September 16, 2003, was filed.

It was moved by Council Member Hilson, seconded by Council Member Rodriquez, and unanimously carried to adopt the following:

Resolution 03-125, "Resolution Authorizing the City Manager to Execute a Professional Services Agreement with the Culver Group for a Boundary Survey of the Hayward Executive Airport"

HEARINGS

4. Appeal of Planning Commission Denial of Use Permit No. PL-2002-0577 to Expand Operation of Drive-Through to 24 Hours - Jack-in-the-Box (Anthony Poligono Operator/Applicant) - Foodmaker, Inc. (Owner) - Request to Amend Use Permit 80-109 - The Property is Located at 1075 Tennyson Road

DRAFT

Staff report submitted by Assistant Planner Koonze, dated September 16, 2003, was filed.

Planning Manager Anderly described the property and the conditions required for approval for the expanded drive-through operation. The applicant agreed to the condition to close and lock the entire parking lot and hire security guards during the extended hours. The drive-through business itself would be the only part of the restaurant to be open. This permit would be on a one-year trial-basis. She noted that further review by the staff indicates that the data does not support the information of criminal activity at this site as a result of their previous 24-hour operation.

Council Member Henson commented on the letters of support from neighbors with conditions to maintain a clean business area and limit noise. He discussed other 24-hour fast food restaurants as the Fairway Park.

Interim Police Chief Dwyer discussed the information presented to community policing, and he noted that crime in the area is generally down. He added that the statistics do not justify denial adding that Jack in the Box management has been cooperative.

Council Member Ward confirmed that the staff recommendation had changed from the Planning Commission deliberations. It was noted that the apartment property owner is now in favor of extending the hours at this time. The applicant has since noted second thoughts on the application for 24-hour service as well. The restaurant management would be utilizing the services of a security guard and lessen the need for the City's police services.

Council Member Jimenez commented that workers from late night shifts need accommodations as well as others.

Council Member Dowling asked for the present operating hours for a new fast-food restaurant.

Council Member Hilson expressed concerns on the amount of noise that vehicles and boom boxes generate. He commented that people rarely call the police on excessive noise. He asked what criteria or threshold information would be utilized to determine the continuance of this business after a period of one-year.

City Manager Armas said he expressed this concern to the applicant, noting that the Chief of Police would exercise his professional discretion to make that determination. He added that the language is included in the exhibits.

Council Member Rodriguez asked about the landscaping on the property line. She also commented on the 24-hour Jack-in-the-Box in Fairway Park.

Planning Manager Anderly explained that the trees along the line had died but were now a requirement included in the conditions.



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Council Member Ward confirmed the verbal agreement with the applicant regarding the determination of violations of conditions. He then asked whether the applicant was now supporting the conditions.

City Manager Armas explained that these had been incorporated in Exhibit "D."

Planning Manager Anderly explained that these conditions were agreeable to the applicant.

Mayor Cooper opened the public hearing at 9:03 p.m.

Virginia Fanelli, representing the applicant, explained the changes that were made at the site to respond to neighbors concerns. Speaker volume was lowered, radios have been turned down, leaflets have been distributed, and they have established a trash collection program in the general vicinity. The parking lot at the rear of the lot will be closed and entrance to the business will not be available to customers during those hours. They have hired security guards during the late night hours. In working with the neighbors, she has letters of support from those who had previously opposed the extension of hours. She also agreed to place 24 inch boxed trees along the back area as requested. She commented that the property owner received the letters of objection but might not have received letters of approval from the same neighbors.

Council Member Ward asked how the Council could support conditions opposed by the owner of the property.

City Attorney O'Toole commented that this is not the placement of any structure, which might impair the property. It is a condition of someone who has a legal interest to operate a business on the property. It is a tenant-landlord issue, rather than a City Council question. If their lease states hours of operation, it would then be enforceable.

Council Member Ward suggested that he would be more confident if the property owner approved the extension and suggested that perhaps the item could be continued until the property owner approves the changes.

Council Member Dowling asked how the parking would be closed. Ms. Fanelli stated that sturdy stanchions would be used to close off the parking lot. She then described the process for closing off the restaurant.

Tom Silva, a property manager for seventeen years, commented on the open dialogue that was offered to resolve issues. He noted that the noise has gone down substantially, but asked that the back lot be closed at 7 p.m. He also suggested additional trees be installed and that they be more mature trees for privacy. He commented that there were no lighting issues in his experience.

DRAFT

Council Member Ward asked about the difference in the time of closure for the parking lot between Mr. Silva's comments and the staff report. Ms. Fanelli suggested the applicant would agree to closing off the back portion of the parking lot permanently. They also agreed to plant 24-inch box trees between the two properties.

Jason Moreno emphasized the need to focus on the crime issues in this area. He suggested that extra law enforcement might be necessary at this location.

Mayor Cooper closed the public hearing at 9:28 p.m.

Council Member Ward reluctantly moved to support the staff recommendation, as well as the exemption from CEQA, and to approve a one-year trial period. He modified the conditions to read: "the parking area will be closed to the public by 10 p.m., 7 days a week." The security guard shall be posted daily, from 10 p.m. to 6 a.m. Additional conditioning will include added landscaping with the planting of as many 24-inch boxed trees as appropriately determined by the landscape architect. Additionally, the applicant has indicated that they will close the back portion of the parking lot on a permanent basis. Council Member Henson seconded the motion.

Council Member Hilson requested that the maker of the motion and the second to consider adding a friendly amendment to bring up conditions on the site in the landscaping to current requirements. Council Members Ward and Henson agreed.

Council Member Dowling suggested a revision of the findings as they related to a denial. He noted that he appreciated the cooperation of the owner with the neighborhood in this area. He expressed concern that the Police Department would be overworked while other business might be neglected. He would not be supporting the motion.

Council Member Rodriquez said that this is ludicrous when the end result is simply to purchase a hamburger. It is too complicated a situation. There are too many things involved for her to support this motion.

Council Member Henson said he felt that approval is warranted since this is a trial period and it could be rescinded subjectively. He noted the positive changes in the area.

Mayor Cooper that she would be supporting the motion as there are very few opportunities for late night activities in this area for young people to congregate in Hayward. She suggested the Police to be there a couple of weekends to cite people who are breaking the law. This would benefit many. She commented on the lack of activities for young people in this area late at night.

It was moved by Council Member Ward, seconded by Council Member Henson, and carried to adopt this resolution by the following roll call vote:



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Resolution 03-126, "Resolution Approving Use Permit Application No. 2002-0577 for 24-hour Operation of the Drive-Through Window for a Period of One Year at the Jack-in-the-Box Located at 1075 West Tennyson Road and Approving Additional Conditions of Approval"

AYES: Council Members Jimenez, Ward, Henson
MAYOR Cooper
NOES: Council Member Hilson, Rodriquez, Dowling
ABSENT: None
ABSTAINED: None

Mayor Cooper then called for a 5-minute recess.

5. Amendment of Benefit District 407-95, Arbutus Court Sanitary Sewer District, to Annex Two Parcels into the District – Padilla and Rand (Applicants) and Utility Service Agreement 03-02 – Duca, Gunseor, Rose, Rand and Padilla (Applicants/Owners) - Authorize the City Manager to Execute Utility Service Agreements for Sanitary Sewer Service for Properties Located on Arbutus Court

Staff report submitted by Development Review Engineer Gaber, dated September 16, 2003, was filed.

Development Review Engineer Gaber described the amendment regarding the additional sewer service for the properties on Arbutus Court. He commented that there were two applicants for the additional service, although notices were sent to everyone in the area. He said others might have connected and not reimbursed the initial property owner. He said staff would be undergoing a survey in the area to determine whether there are others who have connected to the service. The second item is five utility service agreements. Issues include whether the City has the right to do this as well as no protest of an annexation hearing. The City Engineer has determined that this is proper.

Council Member Henson discussed the Castle Homes agreement and its relevance to the process. He then asked whether other improvements in the area might interfere with this action.

City Manager Armas noted that various speakers might consider this relevant regarding actions taken and whether they are allowed. He said this might stem from action taken during the development of the Prominence Development. Staff does not believe that is applicable to this matter. He said this is in accordance with an agreement from 1995 to allow the homeowner who initially laid out the funding for the system to recover his expenses. He indicated that this action would not affect future improvements.

DRAFT

Council Member Hilson asked whether this was any different from previous conditions of similar parcels.

City Manager Armas said this was the same and has been done in other areas of the City of Hayward.

Council Member Dowling asked if there were other alternatives to this service agreement, particularly in the Fairview area.

City Manager Armas commented on correspondence from the County indicating a requirement of connection to a sewer system if there is one within 200-feet of the property.

There was discussion on the reimbursement to the property owner who paid for the original installation of the sewer line as well as any new construction on the surrounding properties.

Mayor Cooper opened the public hearing at 10:11 p.m.

Melba Bertush, who lives on Picea Court, asked for clarification of equal access rights to the sewer. She felt that there were questions about the installation of the sewer lines itself.

City Manager Armas referred to a letter from the City Attorney in 1990, which was presented as part of the packet and had been presented to Ms. Bertush as well.

Mayor Cooper assured her that staff would respond to her concerns.

Jewell Spalding stated that the major problem in this area is percolation, adding that the area is very unstable for any septic systems. It is not a choice by the County. She noted that she paid \$10,000 to Prominence for her hook-up. She noted that these same issues were presented in previous years. She commented that she had previously suggested a joint powers agreement between the City and the County so there would be coordination between the two powers in determining responsibility. She suggested the County and the City work together on developing this area.

James Jardine commented on the official public hearing notice, which he maintained does indicate that he is included in the original benefit district. He then discussed the easement that is not related to the homeowners' association, grant deed, and survey. He asked for a "sit-down" with the City to discuss common interests.

Council Members asked him whether he was objecting to this action.

Mr. Jardine said his concerns were not specifically related to this issue. He did not agree with any legal requirements that they would have to sign.

Javier Padilla said he was an applicant and had been especially concerned with health and safety



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issues after his septic tank failed. He has been living on the property since April 1998. He indicated that he had no problem with the reimbursement. He said he was upset that the hearing had been delayed since he requested it back in July. He expressed his opposition to having to sign documents accepting any future annexation.

Mayor Cooper closed the public hearing at 10:37 p.m.

It was moved by Council Member Hilson, seconded by Council Member Ward, and carried with the following roll call vote to adopt:

Resolution 03-127, "Resolution Amending Benefit District 407-95, Arbutus Court Sanitary Sewer Benefit District, to Annex Two Properties into the District and Approving the Amended Engineer's Report and the Method for Calculating the Fee Charged to the District's Properties"

Resolution 03-128, "Resolution Authorizing the City Manager to Apply to LAFCO for Approval of Utility Service Agreements (USA 03-02) to Provide Sanitary Sewer and Water Services to Properties Located on Arbutus Court and Further Authorizing the City Manager to Execute Such Agreements, as well as Agreements for Completion of Public Street Improvements"

AYES: Council Members Jimenez, Hilson, Rodriquez,
Ward, Dowling, Henson
MAYOR Cooper
NOES: Council Member Jimenez
ABSENT: None
ABSTAINED: None

LEGISLATIVE BUSINESS

6. Introduction of Ordinance to Adopt Revised Hayward Municipal Water System Code

Staff report submitted by Deputy Director of Public Works Ameri, dated September 16, 2003, was filed.

Deputy Director of Public Works Ameri made a brief report.

Mayor Cooper opened and closed the public hearing at 10:39 p.m.

DRAFT

It was moved by Council Member Henson, seconded by Council Member Rodriquez, and unanimously carried to introduce the following:

Introduce Ordinance 03-___, "An Ordinance Amending Chapter 11, Article 2 of the Hayward Municipal Code by Adopting a Revised Hayward Municipal Water System Code"

COUNCIL REPORTS

Council Member Dowling commented on his attendance at the League of California Cities in Sacramento. He discussed a unanimous motion passed regarding a ballot initiative to require 2/3 of the Legislature's agreement for taking funds from cities, as well as needing a majority vote of the people.

ADJOURNMENT

Mayor Cooper adjourned the meeting at 10:48 p.m. with Council Member Rodriquez noting the death of Ray Solis, a Hispanic activist within the City of Hayward. She cited numerous contributions made by him and called him a very special man. She introduced two of his grandsons.

Council Member Jimenez also adjourned the meeting in memory of Tom Goff, columnist, sportsman, and activist, as well as Steve Pineda from Victory Outreach who was a mainstay in solving the homeless problem.

APPROVED:

Roberta Cooper, Mayor, City of Hayward

ATTEST:

Angelina Reyes, City Clerk, City of Hayward